

Scottish Parliament Region: South of Scotland

Case 200600349: Dumfries and Galloway Council

Summary of Investigation

Category

Local government: Planning; Handling of planning applications

Overview

The complainant (Mr C) raised a number of issues with Dumfries and Galloway Council (the Council) concerning the Council's handling of two planning applications submitted for the erection of a dwelling-house on a site close to his property.

Specific complaint and conclusion

The complaint which has been investigated is that the Council in their handling of the planning applications acted unreasonably and ignored the views submitted by the objectors (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. The complaint was made by a man (Mr C) on behalf of a number of residents living close to the planning site which was the subject of the complaint. The complaint concerned Dumfries and Galloway Council (the Council)'s handling of two planning applications submitted for the erection of a dwelling-house and detached domestic garage, formation of access and lay-by and installation of private treatment system. Mr C raised a number of issues surrounding the planning applications.

2. The complaint from Mr C which has been investigated is that the Council in their handling of the planning applications acted unreasonably and ignored the views submitted by the objectors.

Background

3. In 1997 an application for outline planning permission for the erection of a dwelling-house on the site was refused by the Council on the grounds that the applicant had failed to demonstrate that the development could be adequately drained. In 2004 a new application for outline planning permission for the erection of a dwelling-house and installation of septic tank and raised bed soakaway was considered by the Annandale and Eskdale Regulatory Area Committee (the Committee). The matter of drainage was addressed in this application. Following consideration of the application, outline planning permission was granted, subject to a number of conditions.

4. A fresh full planning application was subsequently submitted to the Committee on 27 June 2005 when consideration of the application was deferred to allow a site visit. Following the site visit the Committee at a meeting on 11 July 2005 decided to grant planning consent subject to a number of conditions. Both applications have been the subject of complaints from Mr C.

Investigation

5. It is clear from the available information that Mr C has strong objections to the development of a dwelling-house at the site, which is situated in a small village based in open countryside. While Mr C has received responses from the Council he remains dissatisfied with the Council's handling of the applications, particularly in relation to the domestic water supply and sewerage system, orientation of the house and position of the driveway. He advised me that in

particular both the position of the new dwelling and driveway had adversely affected the property opposite the new dwelling.

6. Mr C wrote to the Council detailing his continuing concerns about their handling of the applications (outline planning application and full planning application). The Council responded to Mr C addressing each of the points raised by him. They explained that, despite Mr C's continuing objections to the applications, there had been no sound planning reasons to refuse the applications.

7. I have explained to Mr C that it is not my role to question professional judgement or assess technical aspects of planning applications, unless I see evidence of maladministration or service failure in the planning process.

8. As a result, my investigation has focused on whether the Council, in considering the applications and Mr C's objections, acted properly and applied their normal processes and procedures.

9. My investigation of Mr C's complaint has involved reading all relevant documents, including correspondence provided by Mr C. I have also examined copies of relevant planning reports and minutes.

10. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on a draft of this report.

Complaint: The Council in their handling of the planning applications acted unreasonably and ignored the views submitted by the objectors

11. I am satisfied that the Council have, in considering Mr C's representations, responded to all the issues he has raised, in particular his continuing objection to the orientation of the house, position of the driveway and domestic water supply and sewerage system. The Council have fully explained why they felt the house and driveway should not be repositioned and why there were no planning grounds to refuse the applications. I do not intend to duplicate the Council's detailed response to Mr C here, however, I will respond to the following points raised by Mr C.

12. Mr C alleged that the objectors were misled at the outline planning stage about what issues would be considered if an application for reserved matters

was submitted and were given assurances that the chances of the development proceeding beyond the outline planning stage were virtually nil.

13. The Council have explained that, in granting the outline planning application, the principle of a housing development on the site had been established and only reserved matters required to be addressed should an application for reserved matters be submitted. The planning report which had been sent to Mr C clearly detailed those issues which still required to be determined. Notwithstanding this, the applicant subsequently submitted a new application for full planning permission. The conditions of the outline planning permission did not, therefore, pass over to the new application which required to be considered on its own merit.

14. From the available evidence it is not clear why Mr C would believe that the development, having received outline planning permission, was unlikely to proceed. The Council have advised me that, having checked their records, the case officer involved (Officer 1) had no recollection of advising Mr C that the development was unlikely to proceed. In fact Officer 1 stated that, as a planner with 17 years experience, he would never state that a site, no matter how difficult it may be to develop, would not be developed. Similarly, he would be unable to guarantee what decision the Council as Planning Authority would make on any planning application. The Council strongly refute Mr C's allegation that a planning officer gave any assurances that the development was unlikely to proceed. Having considered the outline planning report there appears to be no indication that there would be difficulties with the development proceeding provided the applicant complied with the conditions attached to the outline planning consent (see paragraph 13 above).

15. To further demonstrate that the objectors had been misled in relation to consideration of the planning applications, Mr C stated that, although the full planning report had detailed that the applicant had taken on board the outline condition relating to the access to the dwelling-house this condition had not been met. The Council in responding to my enquiry on this point confirmed that the condition relating to access had been fully satisfied. Although this had not been necessary as a new application for full planning permission had been submitted.

16. Mr C also raised with me his concern that the applicant had been allowed to speak at the Committee meeting held on 11 July 2005 to consider the full

planning application. He alleged that this was contrary to the advice given previously by the Council's Head of Planning. The Council have explained that the Committee took the decision to allow the applicant to be heard (the Council explained that the applicant had been unable to attend the previous meeting) but also gave the objectors the opportunity to be heard. Mr C took this opportunity. However, he remained dissatisfied that the objectors were required to speak first as he would have liked to have been given the opportunity of responding to the applicant's presentation. While I can understand why Mr C would have preferred to respond to any arguments put forward by the applicant as to why the application should be granted, I am satisfied that Mr C was given ample opportunity to make his views known to the Committee both verbally and in writing.

Conclusion

17. I have seen no evidence of failure on the part of the Council in their dealing with the planning applications. I am satisfied that the applications were processed properly in accordance with the Council's planning policy and procedure, and that all relevant planning factors - including the representations received from objectors and Mr C - were taken into account by the Council before they made the award of outline planning consent and full planning permission. Mr C took the opportunity to make his representations to the Committee both at the outline stage and at consideration of the full planning application. Elected members, during consideration of the full planning application, had an opportunity to visit the site and to watch a PowerPoint presentation. These discretionary decisions, taken without maladministration or service failure, are not open to challenge by the Ombudsman.

18. Clearly Mr C remains dissatisfied with the response he has received from the Council. However, I am satisfied that the Council have considered fully Mr C's representations and have responded in detail to each of the issues raised by him. The Council have explained properly their position on the matter. That Mr C disagrees with the Council's decisions is not, in itself, a complaint of maladministration or service failure I would pursue. Consequently, I do not uphold Mr C's complaint.

21 November 2007

Explanation of abbreviations used

Mr C	The complainant
The Council	Dumfries and Galloway Council
The Committee	Annandale and Eskdale Regulatory Area Committee
Officer 1	Area Planning Manager